

MARC W. RICHMAN

IBLA 84-914

Decided April 23, 1985

Appeal from a decision of the Wyoming State Office of the Bureau of Land Management partially rejecting noncompetitive oil and gas lease offer W-78345.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: Known Geologic Structure--Oil and Gas Leases: Noncompetitive Leases

Where an applicant gained first priority in a drawing, but issuance of a noncompetitive lease was delayed, first by litigation and subsequently by a Secretarial order, and during the interim part of the land in that parcel was designated as within the known geologic structure of a producing oil or gas field, the application was properly rejected as to the land so designated.

APPEARANCES: Marc W. Richman, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

The simultaneously filed noncompetitive oil and gas lease application of Marc W. Richman for Parcel WY 9272 was drawn with first priority in the drawing conducted by the Wyoming State Office of the Bureau of Land Management (BLM) in November 1981. The parcel, as posted at the time of the drawing, embraced 1440 acres in T. 23 N., R. 110, 111 W., 6th Principal Meridian. BLM informed Richman of his success in the drawing and initiated processing with a view toward issuing the lease to him.

However, another applicant for that parcel (and other parcels) had been excluded from the drawing and his application rejected by BLM because his filing fees were remitted in unacceptable form. He protested the rejection, and BLM dismissed the protest, whereupon he filed an appeal to this Board, which affirmed BLM's decision. Ellis R. Ferguson, 69 IBLA 352 (1982). He then filed suit for judicial review. The Court affirmed the Board's decision. Ferguson v. Lieurance, Civ. No. C83-264-K (D. Wyo., May 1, 1984).

While that litigation was pending before the Court, on October 27, 1983, the Secretary issued the following order which was published in the Federal Register:

The Bureau of Land Management periodically issues oil and gas leases in areas outside of known geologic structures (KGS) on a noncompetitive basis through a drawing of applications filed on selected parcels. The use of this method of issuing leases known as simultaneous oil and gas leasing is temporarily suspended. The September drawing will not be held until it has been verified that the parcels are not included in a KGS. Nor will leases be issued from previous drawings that were not processed and completed prior to October 12, 1983, until it is determined that they are not located within a KGS. [Emphasis added.]

48 FR 49704 (1983).

Clearly, in light of this order, BLM could not issue Richman a noncompetitive lease until the required KGS determination had been made. When that was accomplished, 560 acres out of Parcel WY 9272 was designated as within an undefined addition to the Big Piney LaBarge Defined Known Geological Structure, effective July 26, 1984.

By its decision of August 22, 1984, BLM rejected Richman's application for the 560 acres within the KGS, and provided him with the forms and rental request by which he might submit a noncompetitive offer for the remaining 880 acres. From that decision Richman has appealed stating:

An unreasonable amount of time has passed between the time that I was the successful drawee and the determination that the land was within a Defined Known Geological Structure. This decision and the length of time was to my detriment. Accordingly, I would like to appeal the decision rejecting my rights to rent the above-named land.

Appellant's argument is without merit. First, the lapse of time between the drawing and the BLM decision, while long, was not "unreasonable." There were valid and compelling reasons, beyond BLM's control, for the delay. BLM lost jurisdiction over the matter upon the filing of the appeal by Ferguson, and subsequently it was precluded from acting on the matter until after the ensuing lawsuit, when the Court's decision became final. Sierra Club, 57 IBLA 288 (1981). Thereafter, BLM could not act until it had complied with the Secretary's order, which it did promptly.

Second, even if the delay had been excessive and unreasonable, appellant could not prevail. This Board has recently decided two other appeals in which the respective appellants asserted that the delay in lease issuance and the subsequent need to comply with the Secretary's order resulted in land being classified as KGS and their lease offers rejected. Each of those appellants argued, as Richman impliedly argues here, that were it not for the delay in lease issuance, they would have received their leases before the KGS

designations were made. See Victor E. Van Duzer, 85 IBLA 235 (1985) and Evelyn D. Ruckstuhl, 85 IBLA 69 (1985). In Van Duzer, *supra*, we said:

In his statement of reasons appellant indicates that all the requirements prerequisite to issuance of the lease were completed by August 3, 1983, and that the lease should have been issued at that time. Appellant contends that for the lease to be refused based on a December 9, 1983, KGS determination is "unreasonable."

[1] Section 17(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(b) (1982), provides that public domain lands which are within the KGS of a producing oil or gas field "shall be leased * * * by competitive bidding." See also 43 CFR 3120.1(a). Lands classified as KGS land at any time prior to lease issuance must be leased competitively, and a noncompetitive lease offer for such lands must be rejected. Joseph A. Talladira, 83 IBLA 256, 258 (1984) and cases cited.

* * * * *

The Federal district court stated in Angelina Holly Corp. v. Clark, 587 F. Supp. 1152, 1156 (D.D.C. 1984): "[I]t is plain that the Secretary is under no duty to issue or reject leases within a certain period of time and failure to act on those leases for several years is not unlawful."

Appellant has failed to demonstrate any error in the BLM decision.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing

Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Will A. Irwin
Administrative Judge.

